

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Applications of)	MM Docket No. 93-156
)	
Trinity Christian Center of)	
Santa Ana, Inc., d/b/a TRINITY)	
BROADCASTING NETWORK)	File No. BRCT-911129KR
)	
For Renewal of License of)	
Commercial Television Station)	
WHSB-TV, Monroe, Georgia)	
)	
and)	
)	
GLENDAL BROADCASTING COMPANY)	File No. BPCT-920228KE
)	
For Construction Permit)	
Monroe, Georgia)	

To: Honorable Joseph Chachkin
Administrative Law Judge

PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

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TABLE OF CONTENTS

SUMMARY	v
I. PRELIMINARY STATEMENT	1
II. PROPOSED FINDINGS OF FACT	3
A. Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network	3
1. The Applicant	3
2. Renewal Expectancy	4
a. Ascertainment Methodology	6
i. First Quarter 1991	6
ii. Second Quarter 1991	6
iii. Third Quarter 1991	7
iv. Fourth Quarter 1991	11
v. First Quarter 1992	12
b. Preparation and Use of Quarterly Reports	13
c. General Description of Trinity Programming	20
d. Public Service Announcements	36
e. Trinity's Treatment of Community Issues	39
i. First Quarter 1991	39
ii. Second Quarter 1991	39
iii. Third Quarter 1991	42
iv. Fourth Quarter	44
v. First Quarter 1992	46

f.	Public Witness Testimony	48
g.	Community Involvement	48
h.	Record of Compliance With Commission Rules and Policies	48
3.	Media Interests	49
B.	Glendale Broadcasting Company	57
1.	The Applicant	57
2.	Short-Spacing Issue	58
a.	Background	58
b.	Glendale's Original Site Search	61
c.	Glendale's FAA Problems and the Hall Site	63
d.	The Hall Site and the WHSB Site Compared	67
e.	Equivalent Protection and Lack of Interference	68
f.	The Large Available Site Area for a Montgomery Applicant	69
g.	The WFOB Site	70
h.	Glendale's Request to Change Reference Coordinates	72
3.	Media Interests	73
III.	PROPOSED CONCLUSIONS OF LAW	77
A.	Glendale - Short-spacing Issue	77
1.	No Need to Show Availability of Fully-Spaced Sites	78
2.	Magnitude of the Short-Spacing	81

3.	Lack of Interference/Equivalent Protection	82
4.	FAA Considerations	84
5.	Availability of Site Area for Montgomery Applicant	87
6.	Loss of Service	88
7.	Summary of Relevant Factors	88
8.	Alternative Request	89
B.	Renewal Expectancy	90
1.	The Standards	90
2.	Ascertainment	93
3.	Programmed Response to Ascertained Issues	95
a.	Trinity's Programming	97
b.	Treatment of Ascertained Issues	102
i.	Government/State/Federal	102
ii.	Senior Citizens/Aging	103
iii.	Housing	103
iv.	Transportation	103
v.	Crime	105
vi.	Drug/Alcohol Abuse	107
vii.	Education/Schools	108
viii.	Health Care	109
ix.	Pollution/Environment	109

x.	Summary of Treatment of Community Issues	110
c.	Analysis of Precedent	110
4.	Reputation in the Community	113
5.	Community Involvement	113
6.	Compliance With Commission Rules and Policies	114
7.	Renewal Expectancy	116
C.	Media Interests	116
IV.	CONCLUSION	117

SUMMARY

The short-spacing issue must be resolved in favor of Glendale. Glendale was not required to show the unavailability of fully-spaced sites because the WHSG operation is also short-spaced to the reference point for Channel *63, Montgomery, Alabama. Glendale's proposal would increase the short-spacing by only .26 kilometers, and there is no discernible difference between the current WHSG operation and Glendale's proposal. There are important aeronautical benefits to Glendale's proposal because Glendale amended its proposal to respond to concerns of the FAA. Glendale would provide greater protection to the Montgomery allotment than a fully-spaced station operating with maximum facilities. There would be a large available area for any potential applicant for the Montgomery channel to find a site if Glendale is granted a waiver. It would be arbitrary and capricious to deny Glendale a waiver while allowing Trinity to continue operating a functionally indistinguishable facility.

Trinity is not entitled to a renewal expectancy for its operation of WHSG during the renewal period. Trinity wholly ignored its community of license and used WHSG as nothing more than a high powered translator. It made no effort to determine the needs, interests and problems of its community of license (or the county that community is located in). Not

one person from the community or county of license appeared on the station during the renewal period. WHSG did not produce any local programming, and the few programs it did show that were produced within the service area were not shown to treat community issues. While Trinity did conduct ascertainment in a portion of its service area, there was little connection between the ascertainment and programming that was broadcast. Trinity wholly failed to cover several issues that it ascertained to be important, and it did not provide information specific to its service area. There is no public witness testimony in the record favoring renewal of the WHSG license, and Trinity did not engage in any community involvement during the renewal period. These factors require denial of a renewal expectancy. When the record of misconduct by Trinity's officers and directors developed in the Miami proceeding is considered, no renewal expectancy may be awarded. Glendale's overwhelming diversification advantage makes it the superior applicant.

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To: Honorable Joseph Chachkin
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PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Glendale Broadcasting Company (Glendale), by its attorneys, now submits its proposed findings of fact and conclusions of law for the resolution of the issues in this proceeding.

I. PRELIMINARY STATEMENT

1. This proceeding involves the application of Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network (Trinity) for renewal of the license of commercial television station WHSG, Monroe, Georgia, and the mutually exclusive application of Glendale Broadcasting

Company (Glendale) for a construction permit for a new commercial television station on Channel 63 at Monroe, Georgia.

2. On June 14, 1993, the Chief, Video Services Division designated the applications for hearing on the following issues:

1. To determine with respect to Glendale Broadcasting Company:

(a) if circumstances exist which would warrant a waiver of Section 73.610 of the Commission's Rules.

(b) whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

Trinity Christian Center of Santa Ana, Inc., 8 FCC Rcd 4038 (Chief, Video Services Division 1993) (HDO).

3. The HDO also noted that qualifications issues had been specified against Trinity Broadcasting of Florida, Inc., a Trinity affiliate, in the Miami, Florida comparative renewal proceeding (MM Docket No. 93-75). It stated that "any grant of Trinity's renewal application in the instant proceeding shall be subject to whatever action the Commission deems

appropriate in light of the final resolution" of those issues. The Presiding Judge was authorized to proceed "with all other aspects of the instant comparative renewal hearing."

4. Issue 1(b) was resolved in favor of Glendale by summary decision by Order, FCC 93M-492 (released July 27, 1993).

5. By Order, FCC 93M-516 (released August 10, 1993) and Memorandum Opinion and Order, FCC 93M-640 (released October 7, 1993), the Presiding Judge noted that two character issues had been specified against Glendale in MM Docket No. 93-75. A grant of Glendale's application was conditioned upon whatever action the Commission might take in light of a final resolution of the issues in MM Docket No. 93-75.

6. A prehearing conference was held on August 13, 1993. Hearing sessions were held on May 17 and 18, 1994. The record was closed on August 11, 1994 after the parties submitted an additional exhibit. Order, FCC 94M-473 (released August 11, 1994).

II. PROPOSED FINDINGS OF FACT

A. Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network

1. The Applicant

7. Trinity is a nonprofit/non-stock California corporation. Trinity was incorporated on August 2, 1973, and operates pursuant to its corporate bylaws. Trinity was

recognized as a tax-exempt public charity by the Internal Revenue Service on November 30, 1973. Joint Ex. 1, P. 1.

8. The officers and directors of Trinity are as follows:

<u>Name</u>	<u>Position</u>
Paul F. Crouch	President/Director
Janice W. Crouch	Vice President/Director
Norman G. Juggert	Secretary-Treasurer/Director
Terrence M. Hickey	Assistant Secretary
Matthew Crouch	Assistant Secretary
Allan Brown	Assistant Secretary
Jane Duff	Assistant Secretary

Joint Ex. 1, Pp. 1-2.

2. Renewal Expectancy

9. WHSG went on the air pursuant to program test authority on February 22, 1991. At that time, the station broadcast sixteen hours a day. It subsequently increased its broadcast hours in increments to twenty-four hours a day on February 28, 1991. From that date until the end of the renewal period on April 1, 1992, WHSG normally broadcast twenty-four hours a day, with the exception of Sundays, when the station shut down for four hours for equipment maintenance. Trinity Ex. 32, P. 1.

10. Scott W. Jackson first began working for Trinity in April of 1986 at WLXI-TV, Greensboro, North Carolina, as a full time Master Control Operator. He also did some production work at the station. In February, 1991 Mr. Jackson

was transferred to WHSG. He worked at the station from February 22, 1991 until he resigned on July 9, 1993, with a title of "Station Supervisor," subsequently changed to "Station Manager." As Station Manager, Mr. Jackson's job was to supervise the station staff, to interview and recommend the hiring of station employees, and to ensure the station's compliance with FCC rules, such as maintenance of the public file and the preparation of the station's Quarterly Reports. As described in greater detail below, he also conducted the first community leader interviews at the station and supervised the station employee who subsequently conducted the interviews. Trinity Ex. 32, P. 1.

11. During the renewal period, Lindee C. Connolly was Trinity's Network Program Director. It was her responsibility to know what problems and issues were important to the communities served by Trinity owned stations, to research particular topics and issues to determine who might be a good guest to interview with respect to that topic or issue, and then book guests for Trinity's programming, with particular emphasis on its public affairs or talk show programming. During the renewal period, she reported directly to Dr. Paul Crouch, Trinity's President. Trinity Ex. 33, P. 1.

a. Ascertainment Methodology

i. First Quarter 1991

12. According to Trinity's quarterly reports, the top community issues in the service area for the first quarter of 1991 were Education/Schools, Crime, and Drug/Alcohol Abuse. Trinity Ex. 32, Tab B, P. 1. That quarterly report was prepared in California and sent to the station. Neither Mr. Jackson nor any station employee did any ascertainment of the needs and problems of the local service area during that first quarter. Mr. Jackson does not know the source of the problems noted in that quarterly report. Trinity Ex. 32, P. 3.

ii. Second Quarter 1991

13. The top five community problems listed for this quarter are Education/School, Crime, Pollution/Environment, Drug/Alcohol Abuse and Transportation. Trinity Ex. 32, Tab B, P. 12.

14. During this quarter, Mr. Jackson began regularly reading the daily edition of the Atlanta Journal Constitution. He kept a tally of the number of mentions of a particular issue or problem in the newspaper, and cut out those articles and included them in a folder. TBF Ex. 32, P. 3. Every time an ascertainment source mentioned an issue that was listed on the station's "Tabulation of Ascertainments" form, the mention would be noted. Joint Ex. 5, P. 2. The total number of mentions of each issue from each source would be tabulated.

Joint Ex. 5, Pp. 2-3. The issue with the greatest number of total mentions would be considered the most important issue, the issue with the second greatest number of total mentions would be considered the second most important issue, and so on. Joint Ex. 5, P. 3.

15. Monroe, Georgia, the community of license of WHSG-TV, is located in Walton County, Georgia. Monroe is approximately thirty-five miles east of Atlanta, Georgia, which is in Fulton County. Joint Ex. 5, P. 1. During the relevant renewal period, Walton County, Georgia maintained its own fire, police, water, sewage, hospital and public education systems separate and apart of those in Atlanta, Georgia. Joint Ex. 5, P. 2. In the course of his ascertainment efforts, Mr. Jackson did not make any use of the Walton Tribune, a newspaper of general circulation in Walton County, Georgia and published in the county seat of Monroe, Georgia. Joint Ex. 5, P. 1.

iii. Third Quarter 1991

16. Beginning in September 1991, Mr. Jackson and Ben D'Amico, a master control operator, began conducting ascertainment interviews of community leaders pursuant to instructions from Jane Duff's office at Trinity headquarters. Joint Ex. 5, P. 2, Trinity Ex. 32, P. 4. Station personnel also continued to read the daily editions of the Atlanta Journal Constitution. Trinity Ex. 32, P. 4.

17. The quarterly report for this quarter lists six top community issues: Government/State/Federal, Education/School, Health Care, Crime, Senior Citizens/Aging, and Transportation. Trinity Ex. 32, Tab B, P. 36. Government/State/Federal was the most important issue with forty-seven total mentions. Education/Schools was the second most important issue with forty-one mentions, and health care was third with thirty-five mentions. Crime, Senior Citizens/Aging and Transportation each had nineteen mentions. Joint Ex. 5, Attachment 1.

18. In the course of interviewing community leaders for ascertainment purposes, Mr. Jackson does not recall interviewing any community leaders from Monroe, Georgia during the renewal period. None of the community leader interview forms produced by Trinity indicate any interviews of community leaders from Monroe, Georgia or Walton County, Georgia. Joint Ex. 5, P. 2.

19. Mr. Jackson and Mr. D'Amico began conducting ascertainment interviews of community leaders in September 1991, pursuant to instructions from Jane Duff's office at Trinity headquarters. In the third and fourth quarters of 1991, Mr. Jackson and Mr. D'Amico interviewed a total of seventy-five community leaders in each quarter because Mr. Jackson believed that was the number of community leaders that were supposed to be interviewed each quarter. By the first quarter of 1992, Mr. Jackson learned that only twenty-five

community leaders had to be interviewed each quarter to be compliant with Trinity procedures, and that was the number of community leaders who were interviewed in the first quarter of 1992. Joint Ex. 5, P. 2.

20. When Mr. Jackson or Mr. D'Amico contacted community leaders, the leaders were asked to identify what they thought were the three most significant problems and needs in the service area. Trinity Ex. 32, Pp. 4-5. Community leaders were identified by reference to the newspaper accounts that were read and by doing research, such as looking up organizations in the telephone book. As part of Trinity's procedure, the goal was to identify and interview, each quarter, at least one leader representing each of 19 different categories of organizations or interests. These categories include: government; business, military, agriculture; education; religion; civic and fraternal organizations; organizations of and for minorities; organizations of and for women; culture; recreation; the elderly; and, the environment. Trinity Ex. 32, P. 5. Initially, Mr. Jackson understood that once that requirement was met, there was no additional requirement to spread out the remaining interviews among different categories of organizations. At some point during the renewal period, Trinity headquarters told Mr. Jackson not to concentrate a large number of interviews in any one category. Joint Ex. 5, P. 3.

21. When making these calls, Trinity used a standard interview technique or format. When organizations representing a particular group or interest were called based on information taken from the phone book, Mr. Jackson made sure that the person with whom he ultimately spoke was a legitimate representative of that organization, who was qualified to speak for that organization. Mr. Jackson generally asked to speak to the president. Mr. D'Amico followed the same procedure. During a telephone interview, they asked the person to give their name, title, and race or ethnic group. Mr. Jackson verified the person's level of authority and asked them a question like: "what, in your opinion, are the top three issues that need to be addressed in the community." Trinity Ex. 32, P. 5. He did not give the person interviewed a list of issues from which to choose, but tried to let the person being interviewed generate their own list of problems. Trinity Ex. 32, Pp. 5-6. If a community leader mentioned a specific problem, such as "crime", Mr. Jackson tried to encourage the person being interviewed to elaborate. He filled in the information concerning a person's response to his questions, and other information concerning the interviewee, including the person's leadership category, name, address and race or ethnic group, using a form. Mr. Jackson kept track of the race and ethnic group of those he interviewed so that at the end of the quarter Trinity had a

sample of all the races and ethnic groups in the station's service area. Trinity also used these forms to be sure that it did not re-interview the same persons. Trinity Ex. 32, P. 6.

iv. Fourth Quarter 1991

22. The quarterly report for this quarter lists the following four issues as the top community issues: Education/Schools, Health, Drug/Alcohol Abuse, and Homeless. Trinity Ex. 32, Tab B, P. 63.

23. As in the third quarter of 1991, the station interviewed seventy-five community leaders and read the Atlanta Journal Constitution. Trinity Ex. 32, P. 4. The mentions of community issues in the newspaper were not considered in determining the most important issues for this quarter. Trinity Ex. 32, Pp. 6-7, Joint Ex. 5, P. 3. That omission was an oversight and not a conscious decision. Joint Ex. 5, P. 3. If Mr. Jackson had considered the newspaper articles as he was supposed to under Trinity policy, the issues listed below would be the top five ascertained community issues:

1. Government/State/Federal - 88 total mentions
2. Education/Schools - 72 total mentions
3. Crime - 52 total mentions
4. Drugs/Alcohol Abuse - 47 total mentions
5. Housing - 42 total mentions

Trinity Ex. 32, Tab E, P. 2.

v. First Quarter 1992

24. Trinity's quarterly report for that quarter lists four issues as the top community issues: Crime, Education/Schools, Health Care, and Drug/Alcohol Abuse. Trinity Ex. 32, Tab B, P. 85. Crime, with 135 total mentions, was the most important issue. Education/Schools received seventy-three mentions and was the third most important issue. Health care was fourth with fifty-six mentions, and Drugs/Alcohol Abuse was fifth with fifty-five mentions. Joint Ex. 5, Attachment 2. Mr. Jackson and Mr. D'Amico interviewed twenty-five community leaders in this quarter. Trinity Ex. 32, P. 4. They continued to read the Atlanta Journal Constitution. Id. The ascertainment tabulation for that quarter indicates that viewers' phone responses were considered in ascertaining community issues. Joint Ex. 5, Attachment 2, P. 2. Mr. Jackson has no recollection of how viewers' phone calls were received or tabulated in connection with ascertainment during this quarter. Joint Ex. 5, P. 4.

25. In the first quarter of 1992, state and federal government received a total of seventy-nine mentions, which was the second most number of mentions received by any issue. Trinity headquarters did not have any program that was responsive to that issue. Joint Ex. 5, P. 3. Pursuant to instructions from Jane Duff's office, Mr. Jackson did not list state and federal government as one of the top issues in the

community because there were no programs responsive to that issue. Joint Ex. 5, Pp. 3-4.

b. Preparation and Use of Quarterly Reports

26. The quarterly report for the first quarter of 1991 was prepared in California without any input from Mr. Jackson or station staff. Trinity Ex. 32, P. 3.

27. Beginning in the second quarter of 1991, Mr. Jackson would send a preliminary report to Trinity's Department of Public Affairs after the first month or six weeks of each calendar quarter. The preliminary report listed the top five problems in the community. Trinity Ex. 32, P. 3. Once community leader interviews were started, the community leader interview sheets for the interviews that had taken place would be sent with the preliminary report. Trinity Ex. 32, P. 4.¹

28. At the end of each calendar quarter, Mr. Jackson would send a final report listing the top five issues or problems in the community to Trinity's Public Affairs Department. Trinity Ex. 32, P. 7. The purported purpose for sending the preliminary and final reports to Trinity headquarters was to assure that the network was aware of the problems and needs of the station's service area, so that the public affairs and other programming produced by Trinity would

¹ The community leader interviews did not start until September 1991, which was after the preliminary report for the third quarter would have been sent. Joint Ex. 5, P. 2.

be responsive to the needs and interests of the service area. Trinity Ex. 32, P. 4.

29. It was the job of Trinity's Public Affairs Director to provide the preliminary and final reports of each Trinity station to Mrs. Connolly. During the renewal period, Deanna Sebastian served as Public Affairs Director until the fall of 1991, when Dixie West assumed that role. Jane Duff was generally responsible for the Public Affairs Department and supervised the Public Affairs Director. Trinity Ex. 33, P. 3. On occasion, Mrs. Duff or the Public Affairs Director would tell Mrs. Connolly that a particular problem had come up in a particular community that needed to be covered on a program. Trinity Ex. 33, Pp. 3-4. On occasion, Paul Crouch or Janice Crouch would suggest community needs. Trinity Ex. 33, P. 5. Mrs. Connolly used both the lists of problems and the oral reports and suggestions as the basis of her research and to schedule guests for particular shows. She would book guests to discuss or treat a particular problem on the lists of problems from the various stations. Usually there was a great deal of agreement, or overlap, concerning the most important problems in the various communities. If, as was usually the case, the topic on which a guest was to be interviewed was both a problem local to the KTBN, Santa Ana, California service area and a problem in a number of communities served by Trinity network stations, Mrs. Connolly testified that she

requested guests who were to be interviewed to discuss the problems from both a local and a national viewpoint. For example, if a guest were discussing the Neighborhood Watch Program, she would ask the guest as well as the host to be sure to discuss how to either get in touch with the program in their community, or how to start the program in their community. In this way the guest's interview would allegedly be responsive to both the crime problem in the local service area as well as in other communities, like Atlanta/Monroe, in which the program aired. Trinity Ex. 33, P. 4.

30. During each quarter, Mrs. Connolly's first priority in scheduling guests would be to treat the top five problems identified by all of the Trinity stations. These top five problems were pretty much treated equally. She would then schedule guests to treat the other problems mentioned on the lists for each station. Each quarter she attempted to schedule a guest on a program to discuss every problem on the list of problems for each station. Trinity Ex. 33, P. 4. Mrs. Connolly kept a chart or graph of the problems identified by each community, such as "Atlanta/Monroe," and of each show produced which treated one of the problems to ensure that each problem was treated thoroughly during the quarter. Unfortunately, this documentation no longer exists. Trinity Ex. 33, Pp. 4-5.

31. Mrs. Connolly does not remember any particular instance where she scheduled guests to treat an issue which was peculiar to the WHSG-TV service area. In fact, she cannot now remember any specific problem or issue which she can identify with WHSG-TV. She is certain, however, that she received lists of problems/issues for WHSG-TV after it went on the air. She has a specific recollection of the station being listed on her grids showing problems and the guests invited to discuss the problems. She is therefore "certain" that she scheduled guests on Trinity programming to respond to the problems and needs identified by WHSG-TV's service area needs. Trinity Ex. 33, P. 5. Mrs. Connolly claims she was "particularly sensitive" to her responsibility to meet a station's problems when the station, like WHSG-TV, had no local studio and was dependent upon network programming. TBF Ex. 33, P. 6.

32. Within a few days after the station sent in its final report, it would receive the quarterly report for KTBN-TV in Santa Ana (Trinity's flagship station) which listed a number of problems and a description of programs broadcast by Trinity during the calendar quarter responsive to those problems. If the problems on the report received from Trinity did not match the top problems determined in the service area, Mr. Jackson called the Public Affairs Department and asked if they had any programs responsive to the problems identified in

the service area which their first list had omitted. Within a few days, Mr. Jackson would receive a description of those programs which were responsive to the problem which had been identified. He would then prepare a quarterly report based on the list of problems the station had determined were the most important to the residents of the service area, and the information received from the Public Affairs Department concerning the programs broadcast on Trinity responsive to those problems. This quarterly report would provide the program titles, time, date of broadcast, duration, source and a description, taken from the Trinity continuity notes, of the programs which were responsive to the top problems and needs of the station's service area as determined by the ascertainment. Trinity Ex. 32, P. 7. The information about programs and problems which matched the ascertained problems would be incorporated in the WHSG quarterly report, and Mr. Jackson would be sure to change the time of broadcast of the programs to match the times the programs were broadcast in the Eastern time zone. Trinity Ex. 32, Pp. 7-8. Public service announcements broadcast on the station were also included in the quarterly report. Mr. Jackson would review the final draft of the quarterly report, and the completed document would be placed in the WHSG-TV public file. The quarterly reports (Trinity Ex. 32, Tab B) erroneously identify certain programs such as Joy, Treasures Out of Darkness and Praise the

Lord as "L" for local. These programs are produced in Southern California and are local productions for KTBN-TV, not for WHSG-TV. Trinity Ex. 32, P. 8.

33. In reviewing the quarterly reports, Mr. Jackson did not take the time to compare the programs listed on the quarterly report with logs of the programs actually broadcast. In fact, because of transmitter problems, last minute substitutions, or simple human error, on occasion the programs noted as broadcast in the quarterly report were not broadcast, or not broadcast at the same time or day noted. Trinity Ex. 32, P. 8.

34. A comparison of the WHSG-TV program logs and the Quarterly Reports shows that the following program episodes listed in WHSG-TV's quarterly reports did not air at the time and date indicated on the quarterly reports:

<u>Program Name</u>	<u>Episode No.</u>	<u>Date</u>	<u>Time</u>
The 700 Club	424-91	4/21/91	3:00 p.m.
Feedback	160	4/26/91	12:00 p.m.
Treasures out of Darkness	18	4/26/91	5:30 p.m.
A Date With Dale	121	5/21/91	8:00 p.m.
Feedback	175	7/11/91	8:30 p.m.
		8/1/91	8:30 a.m.
The 700 Club	728-91	7/28/91	3:00 p.m.
Feedback	175	8/1/91	8:30 a.m.